CALCUTTA HIGH COURT

Sm. Nirmala Sundari Dassi

Vs.

Sudhir Kumar Mitter

Suit No. 158 of 1935

(P.B. Mukharji, J.)

18.03.1955

JUDGMENT

P.B. Mukharji, J.

1. This matter arises out of a special report by the Registrar made under Chapter XXVI Rule 50 of the Original Side Rules of this High Court, seeking the opinion of this Court whether the Final Mortgage Decree for Sale, under which he is selling the mortgaged premises, has become barred by limitation. The Registrar in his Special Report dated 23-8-1954 states:

> "I make a Special Report to the Hon'ble Court seeking the opinion of the Court on the following questions:
> (1) Is the decree dated 20-4-36 barred by limitation?
> (2) If so, can any Reference proceedings be now initiated under the said decree?
> I direct Shri S.K. Ghosh, Solicitor, to take out a Notice of Motion and seek directions of the Court on the points contained in this Special Report within a week from the re-opening of the Court after the Long Vacation.
> The Reference stands adjourned 'sine die' with liberty to mention."

The attorney For the plaintiff according to the directions of the Registrar's Special Report took out the Notice of motion on 23-11-1954 as required under Rule 50 Chap. XXVI of the Original Side Rules.

2. A point of law of very considerable interest and importance arises for determination on this Special Report. This issue for determination is whether a Final Mortgage Decree for Sale can itself be barred by limitation as provided by Article 183 of the Limitation Act, the decree being one made by this High Court. Questions of revivor and acknowledgment are also involved in the facts of this case.

3. Some essential facts and dates in the numerous proceedings in respect of the premises

concerned require to be stated for a better appreciation of the points and their ultimate decision. On 19-5-1934 the defendant in the suit mortgaged to the plaintiff premises No.86/1, Cornwallis Street, 7/C, Kirti Mitter Lane, 13/1, Desspara and 31, Golaghat subject to previously created charges. The plaintiff filed this present mortgage suit in 1935. A preliminary decree was passed in favour of the plaintiff on 8-3-1935. On 23-7-1935 after taking the accounts the Registrar filed his report certifying that a sum of Rs. 3,914-6-6p. was due by the defendant to the plaintiff on the said mortgage. Thereafter on 20-4-1936, the final decree for sale was passed in favor of the plaintiff in this mortgage suit. The main point for determination in the Special Report is whether this final decree for sale dated 20-4-1936 is barred by limitation. The form of the final decree for sale in this case followed the standard form as provided in Form VI of Appendix D to the First Schedule of the Civil Procedure Code by directing inter alia:

> "It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold with the approbation of the said Registrar to the best purchaser or purchasers that can be got For the same."

4. During the period from this final decree for sale in this suit on 20-4-1936 until 17-2-1954 diverse proceedings took place in respect of the same mortgaged premises in suits brought by prior mortgagees with the present plaintiff as party defendant in those suits and proceedings. As none of those proceedings ultimately helped the present plaintiff mortgagee to realize her dues on her mortgage decree, she obtained leave of this Court on 17-2-1954 to draw up and complete and file the said final decree dated 20-4-1936. Pursuant to that leave she filed the said final decree in Court on 29-4-1954 and thereafter the present reference before the Registrar for sale began. It is at this reference that the point of limitation was taken by the mortgagor judgment-debtor when the Registrar made the Special Report on the point of limitation.

5. It will be necessary at this stage now to focus attention on the period of time between the date of the final decree for sale in this suit on 20-4-1936 and the ex parte order of 17-2-1954 granting leave to draw up and file the said decree. In 1935 a prior mortgagee by the name of Narain Chandra Dutt filed a suit being suit No.1094 of 1935 against the same mortgagor including the present plaintiff as puisne mortgagee as defendant in the suit. The preliminary mortgage decree in Narain's suit No.1094 of 1935 covering these properties was passed on 20-4-1936 and the final decree in that suit was passed on 28-4-1938. The Golaghat property was sold in that suit and was purchased by the prior mortgagee Narain Chandra Dutt by setting off part of his dues towards the purchase price.

Then began a second suit on 17-11-1941 when Sitanath Saha Roy and others filed a mortgage suit No.1771 of 1941 against the same mortgagor where also the present plaintiff was added as a defendant and which involved the same mortgaged premises. In that suit No.1771 of 1941 a preliminary mortgage decree was passed directing inter alia that the defendant mortgagor Sudhir Kumar Mitter and the present plaintiff Sm. Nirmala Sundari Dassi should pay into Court in Suit No.1771 of 1941 such sum as might be found due in that suit and in default the plaintiffs Sitanath Saha Roy and others in that suit were given liberty to apply to Court for a final decree for sale of the same mortgaged properties. A sale in fact was held in that suit but was set aside by an order of the court dated 21-3-1947 because the defendant Sudhir Kumar Mitter paid money into Court as therein directed. The result was that from 17-11-1941 to 21-3-1947 although the present plaintiff participated in that suit in the hope of getting her dues the sale became infructuous.

In the meantime on 13-7-1942 another prior mortgagee being Pannalal Pramanick instituted a third mortgage suit No.909 of 1942 against the same mortgagor Sudhir Kumar Mitter in respect of the same mortgaged properties and in which also the present plaintiff was added as a defendant by an order of this Court. In that third suit No.909 of 1942 a final decree for sale of the mortgaged properties was passed by consent of all parties including the defendant the mortgagor Sudhir Kumar Mitter and the plaintiff Nirmala in this suit.

6. The terms of this consent decree dated 20-12-1949 in that suit No.909 of 1942 are material because of the questions of revivor and acknowledgment that have been raised on this application. I, therefore, set out the relevant portions of such consent decree *(Pannalal Pramanick v. Narain Chandra Dutt and others*[1]):

> (1) "It is hereby ordered and decreed with the consent of the parties by their respective advocates that the account of the defendant Sm. Nirmala Sundari Dassi in respect of moneys due to

her taken by the Registrar of this Court in her *(Nirmala Sundari Dassi v. Sudhir Kumar Mitter*[2]*)* be treated as her account in this suit."

> (2) "It is further ordered and decreed with the like consent that default having been made in payment of the amounts due to the plaintiff and the said defendant Sm. Nirmala Sundari Dassi the said mortgaged properties or a sufficient part thereof be sold but not until the expiry of six months from date thereof with the approbation of the said Registrar to the best purchaser or purchasers that can be got For the same."
> (3) "And it is hereby further ordered and decreed with the like consent that the money realized by such sale.....
> shall be duly applied (after deduction therefrom of the commission payable thereon and the expenses of the same) first in payment to the plaintiff .....
> and the balance, if any, shall be applied in payment of the amount due to the said defendant Sm. Nirmala Sundari Dassi and that if any balance be left it shall be held subject to further orders of this Court."

7. Under this consent decree the mortgaged properties were fixed to be sold by the Registrar on 17-5-1952. But the said sale was not held because defendant-mortgagor Sudhir Kumar Mitter, prior to the date of sale, satisfied the claim of the prior mortgagee Pannalal Pramanick out of Court. Then the present plaintiff applied to this Court for having the carriage of the proceedings of the sale and wanted the mortgaged properties to be sold for default of payment to her. The application came up before me, but as I was of the opinion that the puisne mortgagee had no right to sell the mortgaged properties I dismissed that application on 3-9-1952 with a judgment reported in - *'Pannalal Pramanick v. Narain Dutt*[3]*',* Then the plaintiff in this suit appealed from my order, but the Court of Appeal upheld my views and dismissed her appeal on 9-12-1953.

8. This analysis of facts shows that the present plaintiff Sm. Nirmala Sundari Dassi was

[1] dated 20-12-1949 in suit No.909 of 1942
[2] suit No.158 of 1935
[3] 95 Cal LJ 70

certainly not idle all these years. It is not true to say that after she obtained her final decree in her suit on 20-4-1936 and until 17-2-1954 when she had the final decree drawn up, completed and filed, a period of 18 years, she took no steps to realise her decretal dues. In fact litigation dogged the heels of this plaintiff throughout this long period of time where she was a party defendant as a puisne mortgagee in no less than three different suits involving the same mortgaged properties. On these facts I would in any event hold that there was "sufficient cause" within the meaning of Section 5 of the Limitation Act and if it be held that the sale reference is a kind of vague application, which I have held it is not, I would in that event permit such reference even after the period of limitation contained in Article 183 of the Limitation Act.

9. On behalf of the mortgagor-defendant the contention now is that the final decree for sale being dated 20-4-1936 became barred by limitation after 12 years on 20-4-1948 and, therefore, the mortgaged properties can no longer be sold under her mortgage decree although she still remains wholly unpaid. The first argument is that under Article 183 of the Limitation Act, the limitation provided is 12 years in the case of a judgment, decree or order of this Court in the exercise of its ordinary original civil jurisdiction. The period of limitation of 12 years is expressed to run from the date when a present right to enforce that judgment, decree or order accrues to some person capable of releasing the right. There is a proviso to extend such limitation inter alia in case of a revivor or acknowledgment when the limitation of 12 years runs from the date of the revivor or acknowledgment.

10. Many intricate questions arise on this argument. The first obvious question is whether the present proceeding is at all an "application" to enforce a judgment or decree of this Court. There is no application by the decree-holder in this case. Article 183 of the Limitation Act appears in the third division of the First Schedule to that Act and operates only against "applications". In fact, Section 3 of the Limitation Act provides that subject to the provisions contained in Sections 4 to 25 of the Limitation Act, every "application" made after the period of limitation prescribed therefore by the First Schedule shall be dismissed. In the Limitation Act there is no definition of what an "application" is, although Section 2(i) thereof defines an applicant as including any person from or through whom an applicant his right to apply. If, therefore, the present proceeding is not an application at all, then Article 183 of the Limitation Act cannot in terms apply. This is a point not exactly covered by any reported precedent in India directly bearing on it.

11. It came very near a decision in the case of *Apurba Krishna v. Rash Behari Dutt, a decision in the Court of Appeal reported in*[4] rendered in a suit For the enforcement of a mortgaged security, where the usual preliminary decree and the order absolute for sale were made under the then Sections 88 and 89 of the Transfer of Property Act, 1882. The decision of the Court of Appeal was that the application was barred by limitation under Article 183 of the Limitation Act on the ground that the right to enforce the final decree for sale accrued on the date of the final order for sale and the application being made after twelve years from such date was time-barred.

12. Two major facts distinguish that decision from the present application before me. One is that there was no question of revivor or acknowledgment under the proviso of Article 183 of the Limitation Act and the pursuit by the decree-holder as a puisne mortgagee for

[4]47 Cal 746 : AIR 1920 Cal 638

possible relief in other prior mortgagees' suits where the decree-holder was a defendant. The other is that in that case there was in fact a formal application made as it had to be made for substitution of the representatives of the deceased and then to proceed with the sale after

completing the final order. Here the whole question turns on the absence of any application at all by the decree-holder. ‘

13. That case originally was decided by Rankin J. and his decision was confirmed by the Court of Appeal by Sir Ashutosh Mookerjee J. and Fletcher J. Rankin J. very nearly raised the question that is now before me in his original judgment which is also reported in the same report at pp.747-749. In fact, Rankin,J. says at pp.747-748:

> "It is argued For the petitioner in reply that the order absolute was itself an order in execution of the decree dated 30-6-1904, that the application upon which it was made is not yet terminated or exhausted but is still a pending proceeding in execution, that the present application is not a fresh or substantive application and that there is absolutely no limit of time For the continuance of those pending proceedings."

Having raised the question, Rankin,J. does not stop to consider, as it was not necessary in the case before him, what happens when there is no application. Rankin J. came to the conclusion that the period of limitation in that case started running from the date of the final decree for sale and became barred at the time when the petitioners in that case moved an application to substitute the representatives of the deceased and proceed with the sale. In the Court of Appeal Sir Ashutosh Mpokerjee,J. delivering judgment with which Fletcher J. agreed, did not deal with this question whether there was an application within the meaning of Article 183 of the Limitation Act as indeed there was no occasion for it on the facts of that case but observed at p.751 of that report:

> "Consequently, the question is, has the application been made within 12 years from the date when the present right to enforce judgment, decree or order accrued to some person capable of realizing the right. Such right, in our opinion, accrued to the decree-holder when the order absolute for sale was made on 22-3-1907. It has been finally suggested on behalf of the appellant that the right could not accrue till the order had been filed. But no attempt has been made to support this contention by reference to principle or authorities.
> The reason is obvious; if the contention of the appellant were to prevail, the result would follow that the period of limitation might be indefinitely extended by reason of the laches of the decree-holder, who might not as has happened in the case before us file the decree for years. We may add that no attempt has been made in this Court to reiterate the desperate argument, advanced before Rankin J. and rightly overruled by him, that no rule of limitation applies to this matter. In our opinion, the application has been properly dismissed as barred by limitation." As will appear from those observations that the whole judgment proceeded on the assumption, rightly made if I may say so in that case, that there was virtually and in fact an application. There is none in the case before me.

14. The Privy Council in - *'Banku Behari v. Narayan Das*[5]*',* held that the 12 years within

[5] AIR 1927 PC 73

which the mortgage decree could be enforced against the mortgagor personally ran from the date of the final decree and not from the time when the deficiency was ascertained by the sale of the

mortgaged premises. But there the Privy Council was considering an entirely different point. In that case the fourth mortgagee never filed a suit on his mortgage but contented himself by being a puisne mortgagee defendant in the first mortgagee's suit where the latter obtained his final decree for sale. What the fourth mortgagee ultimately did there was to make an application fourteen years after to record satisfaction of part of his mortgage-debt and for personal decree against the mortgagor For the balance. There Lord Phillimore held such an application to be barred under Article 183 of the Limitation Act and said at p.74 of the Report "It is idle to say that he was waiting for previous mortgagees to take steps. After decree every party to a suit is an actor and can take steps to enforce the decree." Here the case before me is very different. In the first place, there is no application by the decree-holder. Secondly, the mortgagee has herself filed a suit and obtained a final decree and did not wait for other mortgagees. Thirdly, she did take steps in other mortgagee's suits and in fact obtained the consent decree dated 20-12-1949 in Suit No.909 of 1942.

15. The point is more fundamental than appears to have been noticed by the Courts so far. A final decree in a mortgage suit is now made under Order 34, Rule 5, sub-rule (iii). Such a final decree is passed "directing that the mortgaged property or a sufficient part thereof be sold." That is also Form VI, Appendix D to the First Schedule of the Civil Procedure Code. The Final Mortgage Decree for sale in this suit used the same language. The form and language of the decree direct sale of the property and considered by itself the decree does not direct the decree-holder to make any further application for enforcing it. Now this itself is an order for sale. It is execution as known to mortgage decrees. So far as execution is concerned, no further step by the decree-holder is contemplated by the Civil Procedure Code to put it into effect. The decree for sale is final because it directs not only sale but appropriation and distribution of sale proceeds For the satisfaction of the mortgage dues. Nothing remains thereafter to be done by the decree-holder and the Registrar also files no report after sale, as in the case of preliminary mortgage decree. What follows thereafter is ministerial in the Sense that the machinery of the Court is employed to conduct such sale and for distribution of sale proceeds. The Court, at the very moment of passing the final decree, could have sold the property itself in the Court room but instead of doing that the Registrar under the Rules of this Court is empowered to carry out this order of sale. No further application by the decree-holder to enforce the judgment within the meaning of Article 183 of the Limitation Act is either stipulated or required under the Civil Procedure Code or, as I will presently show, under the Rules of this Court.

16. Execution of a mortgage decree although differing in procedure from the execution of an ordinary decree for money is in substance and essence the same. In an ordinary decree for money what happens is that the decree-holder applies for execution of his decree on tabular statement seeking to attach the property of the judgment-debtor and sell through the sheriff. What happens in mortgage decree is that the procedure for attachment is not necessary having regard to the mortgage itself and, secondly, the decree-holder instead of applying on a tabular statement seeking for attachment and sale makes a petition For the final decree for sale of the property under Order 34, Rule 5, Civil Procedure Code.
In the case of an ordinary decree for money if the decree-holder has already applied for execution by attachment and sale through the Sheriff and if an order for sale has already been made by this Court and for some reason or other the Sheriff has not carried out the order within 12 years from its date then could it be said that the decree is barred by limitation although no further step was required by the decree-holder, he having taken all steps that the law obliged him to take for

execution of his decree because the Sheriff had not sold the property within 12 years from the date of the order? Rankin,J. in 'Apurba Krishna Sett's case' observed on this point in 47 Cal 746 at p.748. (B) :

> "In view of the unique position of an order absolute, standing midway between the previous decree on one hand and the ordinary forms of execution that are to follow on the other, I do not think it is inconsistent with this ruling to hold that the relation between these acts of the Court is also such that any applications or proceedings under Order 21 of the Code are applications or proceedings to enforce the order absolute and that they will be in time in this case within 12 years from the date of that order."

It is unfortunate that the learned Judge used the expression "application or proceedings" because it is only an application that is barred by Article 183 of the Limitation Act and not vaguely all proceedings.

17. An application to enforce a judgment is certainly barred after 12 years from the date when the right to enforce the judgment accrued. But once that right to enforce the judgment is exercised not only by making an application within that period of 12 years but also by actually obtaining an order for sale, then no further question of any more application to enforce the judgment can in my view arise because by the order for sale the final mortgage decree stands enforced. Nor is there any justification to consider the application for final decree to be a pending application after an order for sale has been made upon it which was the argument put forward before Rankin J. Before the right of a person can be taken away under the Limitation Act it has to come within the specific terms of that Limitation Act. I do not think that any Court is justified in applying any limitation by inference to a species of cases for which the Limitation Act does not provide. If the Limitation Act has not provided for any limitation after the period subsequent to a decree or order for sale whether in ordinary execution or in mortgage decree, then to say that Article 183 continues to operate until he gets the fruits of his decree will be a judicial creation of a new limitation by imposing a further obligation on the decree-holder, not imposed by the Statute. If after the final decree for sale there is no limitation within which he has to obtain the fruits of such sale then it is not For the Court to torture Article 183 of the Limitation Act to make it applicable to such a case but For the Legislature to intervene and provide for it.

18. Delving into the procedural formalities that follow after the final decree for sale in this Court under its Original Side Rules it is necessary to examine whether any steps provided by the Rules of this Court can be regarded as an application by the decree-holder so as to attract Article 183 of the Limitation Act. While examining these Rules it is necessary to bear in mind that not all applications are hit by Article 183 of the Limitation Act but only these that are to enforce this Court's judgment or decree and no others.
Scanning the Rules of this Court, I find that Chap. XVI dealing with judgments, decrees and orders while providing in Rule 27 thereof For the drawing up of a decree or order does speak of "order ex parte on petition", "application", "requisition in writing" and "default in applying" within the particular time specified there. But Rule 27 begins with the words "Except as otherwise provided in the Rules or unless otherwise ordered."
The Court, therefore, can always otherwise order. The Court or Judge also under Rule 46 of Chap. XXVIII has always the power to enlarge time appointed by the Rules. An application to

draw up a decree is not an application to enforce the decree or judgment. Applications under Rule 27 of Chap. XVI for drawing up of an order need not at all be for execution of that order but may be for various other purposes, such as, exhibition of that order in other proceedings or transactions where such order may be relevant to or in support or in proof of any title or status or right that may be in question in entirely different transactions not connected with the proceedings in which the order was made.
This Rule 27 is concerned only with drawing up and not with the filing of decrees or orders and is certainly not itself an application for enforcing judgment or decree within the meaning of Article 183 of the Limitation Act. Chapter XXVI containing the Reference Rules includes "Sales by the Registrar". Rule 4 of Chap. XXVI requires an office copy of the order or the decree directing a reference to be filed in the Accounts Department within the period specified therein. But even there under Rule 5 by an order of the Judge such office copy may be filed even after the expiry of the period prescribed by Rule 4. Rule 7 even goes to provide that a reference may be directed before the office copy is filed under Rule 4. It is clear that Rules 4, 5 and 7 of Chap. XXVI do not require an application to be made.

19. The only possible scope for an application under the Scheme of Rules of this Court is in the requirement of a summons for proceeding with the reference as provided in Rule 17 of Chap. XXVI of the Original Side Rules. Rule 17 of Chap. XXVI expressly lays down that the mode of proceeding before an officer on a reference shall be by summons in Form No.1 to be taken out by the party having the carriage of the reference appointing a time For the purpose of taking into consideration the matter of the decree or order directing the reference. Rule 18 requires such summons to be prepared and signed by the officer to whom the reference is directed. Rule 19 provides that such summons shall unless otherwise ordered be served upon all parties to the suit or the proceeding. Rule 22 provides that upon the return of the summons the officer shall proceed to regulate as far as may be the manner of the execution of the decree or order of reference. The form of the summons as given in Form No.1 under Chap. XXVI, Rule 17 at pages 716-17 is as follows:

> "(Number and title of the suit, or title of the matter).
>
> Let all parties concerned attend before the (Registrar, or other officer conducting the reference) at the Court-house, to take into consideration the matter of the reference directed (or to proceed with the accounts and enquiries directed to be taken and made) by the decree or order) made in this suit and dated the day of
>
> 19
> Dated this day of 19
> Registrar or Officer.
> The Summons was taken out by A.B.,
> Attorney For the applicant.
> To
> (insert the name of the Attorney or person to be served)."

Although it is a summons by the Registrar who acts as a delegate of the Court and not in that

Sense an application by a party, both the relevant rule and the form show on the face of them that this summons has to be taken out by the "Attorney For the applicant". On this view of the matter it may not unreasonably be contended, although I must say here that it has not been contended before me, that an application is required by the Rules of this Court even after the final decree for sale in a mortgage suit. The answer to this possible contention is clear and that is that summons under Rule 17 does not apply in the case of a final mortgage decree for sale but is used only with reference to the preliminary mortgage decree for accounts. On the most relevant Chapter on Sales by the Registrar, namely, Chap. XXVII of the Original Side Rules, no question of proceeding with a reference for sale is at all provided for nor is there any question of summons when the Registrar conducts such sale. The procedure laid down in Chap. XXVI is concerned more with the general rules under the head "Reference Rules" while the special procedure for sales by the Registrar under the final decree for sale comes under Chap. XXVII dealing expressly with "Sales by the Registrar." Chapter XXVI of the Reference Rules appears to be generally though not wholly more appropriate for reference after the preliminary decree for accounts. In fact, the summons whose form I have set out above issues in references after the preliminary mortgage decree and the Rules in Chap. XXVII do not provide for use of such summons after the final decree for sale. After the final decree all that is required to be done under Chap. XXVII is, first, filing of the office copy of the decree or order for sale and then after the deposit of title deeds with the Registrar, the notification, conditions of sale and abstract of title is prepared by the attorney of the party having the carriage of the proceedings. Under Rule 11 of Chap. XXVII the notification, conditions and abstract shall be left to the Registrar and an appointment obtained from him to go through the same. All that Rule 11 requires is that notice of such appointment shall be served on all parties entitled to attend, but unlike Rule 17 of Chap. XXVI no application or summons is required. The rest of the Rules provides for actual sale and bidding and finally distribution by the Registrar of the sale proceeds according to the directions contained in the final decree for sale. He does not even make a report to the Court as after a reference on the preliminary decree. That indicates that nothing remains to be done after the final decree for sale except the ministerial act of conducting the sale and distributing the sale proceeds according to the directions already given in the decree or order for sale.

20. Judged in the light of the Rules contained in Chap. XXVII it is clear that no application by the decree-holder is required after the final decree for sale and therefore Article 183 of the Limitation Act is not attracted. The fear expressed by the Court of Appeal in 'Apurba Krishna Sett's case' that it would give rise to a situation where "the result would follow that the period of limitation might be indefinitely extended by reason of the laches of the decree-holder" and which was described as "the desperate argument" and put forward as the "obvious reason", appears to disregard all the salutary provisions contained in many Rules of Chap. XXVI which prevent such situation. Rule 8 of Chap. XXVI provides,

> "Where no steps are taken within 30 days to apply for and file a decree or order of reference, or where no office copy thereof is filed in the Accounts Department within the time prescribed by Rule 4 or within such further time as may have been allowed, any party may apply to a Judge by summons that the suit be dismissed for want of prosecution or that all further proceedings under the reference be stayed or such order made as to the Judge shall seem fit."

This Rule gives the weapon in the hand of the judgment-debtor who can always apply to the

Judge to have the reference stayed or the suit struck off where no steps are taken to file the decree. There is, therefore, no fear of limitation being indefinitely extended by reason of the laches of the decree-holder. It lies in the hands of the judgment-debtor in such cases of laches to stop the reference. Indeed that provision appears to indicate that there is no question of limitation for then such a provision would not only be not necessary but would be void being repugnant to the Statute of Limitation because if the judgment-creditor has a right for twelve years under the Limitation Act that right cannot be shortened. This again is not the only provision for activating the laggard decree-holder.
Rule 53 of Chap. XXVI gives the power even to the officer conducting the reference to strike off any reference where at any stage it appears to him and he thinks fit that no steps have been taken to prosecute it for 30 days. Rules 57 and 58 contain provision to stop all possible delay in deference with the strict control before the Judge.

21. I, therefore, hold that what is barred after 12 years under Article 183 of the Limitation Act is an application, when that application is to enforce this High Court's judgment or decree. When there is no such application, Article 183 of the Limitation Act has no operation. Unless an application to enforce the judgment is made as when an application is made to substitute representatives of deceased parties who have died during the pendency of the reference as in 'Apurba's case' or where such application is called for under any other provisions of the Rules of this Court or under the Civil Procedure Code, a final decree for sale is not barred by limitation because the actual sale had not taken place within 12 years from the making of the final decree or order for sale. It is wrong to think that this view encourages indefinite prolongation of limitation For the laches of the decree-holder because that is not possible under the Rules of this Court which provide for a much earlier burial of the sale reference under the final mortgage decree for sale, if the decree-holder fails to take steps even for 30 days as in the series of Rules contained in Rules 8, 53, 57 and 58 of Chap. XXVI of the Original Side Rules of this Court.

22. What now requires to be decided is whether the proviso of Article 183 of the Limitation Act, even, if the Article applied, saves the present case on its particular facts from limitation on the ground of revivor or acknowledgment. I shall deal, first with the question of revivor.

23. Revivor is proverbially a good legal teaser. Its origin lies in the mists of the primary aversion of the Courts, both under the Common Law and under the Chancery Division in England to put into execution a decree which was more than one year old or rather which was stale by passage of time although not quite barred by Statutes of Limitation and whose modern echo is preserved in Order 21, Rule 22, Civil Procedure Code , requiring notices to be given.
The word 'revivor' is borrowed from English Law and in the abSence of a definition in the Limitation Act, Indian Courts are left with nothing better than forging in the archives of old English authorities and in the antiquities of the now obsolete English writ of scire facias, in the quest of a guiding principle.

24. Wading through the welter of decisions which I consider unnecessary to recapitulate the esSence of revivor seems simple enough. To constitute a revivor of the decree there must be expressly or by implication a determination that the decree is still capable of execution and that the decree-holder is entitled to enforce it. Therefore, an order for execution of the decree, after notice to the judgment-debtor to show cause why execution should not issue under Order 21, Rule 22, Civil Procedure Code , will operate as revivor, because it necessarily implies such a

determination. Similarly, if a decree is assigned and the Court recognizes the assignment and passes an order allowing the assignee to execute it that would amount to a revivor and give a fresh starting point of limitation. The Privy Council decided in 'AIR 192V PC 73, already quoted on another point in this judgment, that an order for transmission of a decree for execution even if varied by consent upon a petition by the judgment-debtor does not revive the decree so as to avoid limitation on the ground that there is no express or implied determination of the present executability of the decree by such order for transmission. It has even been held in - *'Muthiar Chettiar v. Chidambaran Chetty[6]',* that an adjudication in the execution stage, of the question whether one of the judgment-debtors was a partner of the defendant firm and as such whether the decree was validly passed, could not be regarded as a determination by implication that the decree was capable of execution or that the decree-holder had a right to execute the decree and therefore was not a revivor. Having regard to the trend of the decisions on this point and the principle behind revivor, I have no doubt in my mind that an order of the Judge granting leave ex parte to draw up a decree For the drawing up of which no steps nave been taken within the time provided by Rule 27 of Chap. XVI or Rule 5 of Chap. XXVI, can under no circumstances constitute a revivor of the decree because such an ex parte order does not involve express or implied determination that the decree is capable of execution and that the decree-holder is entitled to enforce it. As I have already said such a leave may be granted for a variety of purposes of which execution need not be one at all. I, therefore, disallow the contention of the decree-holder plaintiff in this case that the order of the Court dated 17-2-1954 granting her leave to draw up, complete and file the final decree constituted such a revivor.

25. But then there is another more compelling fact in this case which is relevant in this connection. That is the fact of the consent decree dated 20-12-1949 in Suit No.909 of 1942 which was brought by Pannalal Pramanik against the said defendant mortgagor Sudhir Kumar Mitter in respect of the same mortgaged properties and where the plaintiff was also a defendant by an order of the Court. In that consent decree it was expressly provided by consent first that the plaintiff's account taken in respect of moneys due to plaintiff Nirmala by the Registrar of this Court in her own suit being the present suit No.158 of 1935 should be treated as her account in that suit and secondly, it was expressly consented to and provided for that if such money due to her was not paid then the mortgaged properties were to be sold and after payment to the plaintiff in that suit the balance if any should be applied in the payment of the amount due to Nirmala. Now these two facts as appearing under that consent decree do in my view constitute a revivor because they involve the determination that Nirmala's decree was capable of execution and that Nirmala had a right to enforce it against the defendant and obtain her claim from the surplus sale proceeds. I therefore hold that the consent decree dated 20-12-1949 in suit No.909 of 1942 revived Nirmala's final decree for sale dated 20-4-1936 in her suit No.158 of 1935 and to that revivor the present defendant mortgagor was a consenting party. That being so, I therefore hold that a further period of 12 years from 20-12-1949 is available to the decree-holder under the proviso of Article 183 of the Limitation Act, so that her decree is not barred by limitation.

26. The next point urged in defense of the decree-holder is that this decree is saved from limitation also on the ground of acknowledgment under the proviso to Article 183 of the Limitation Act. The same consent decree dated 20-12-1949 in suit No.909 of 1942 is put forward as the acknowledgment.

27. As I have already said, this consent decree inter alia provided that

"The accounts of the defendant Sm. Nirmala Sundari Dassi in respect of moneys due to her taken by the Registrar of this Court in *(Nirmala Sundari Dassi v. Sudhir Kumar Mitter[7])* be treated as her accounts in this suit".

This particular provision in the consent decree means that the present plaintiff's accounts taken in this suit were treated by mortgagor's consent as her accounts in that suit No.909 of 1942 in which the consent decree was made. To this particular provision the mortgagor defendant agreed. That consent decree therefore acknowledges Nirmala's accounts to be correct and the Accounts show the amount of money due to Nirmala on such accounts.
It is not challenged before me that the mortgagor defendant did not agree to that consent decree. What has been contended by the learned Counsel appearing For the mortgagor defendant is that the acknowledgment in order to save limitation under Article 183 of the Limitation Act must be in writing and signed by the person liable or his agent. It is said that the consent decree in this case is not signed by the mortgagor defendant or his agent. Obviously the consent decree is in writing. It records in its operative part "It is hereby ordered and decreed with the consent of the parties by their respective Advocates." The Advocates are for this purpose of acknowledgment certainly agents for their clients because consent by the Advocate is treated as consent by client unless the client can dispute that he did not give any authority to the Advocate to consent. The client, i.e. the mortgagor defendant in this case, does not dispute the fact that his Advocate had authority from him to give the consent and it is not disputed that the advocate endorsed and signed his brief recording the consent decree. Signature of the Advocate on the endorsement on the brief is sufficient to comply with the requirements of the proviso under Article 183 that acknowledgment has to be "in writing signed by the person liable to pay ..... or his agent". Besides, this consent decree was settled, drawn up, completed and filed on notice to the mortgagor defendant's attorneys whose consent also in writing signed by him can be spelt out from the procedure of settling decrees. Attorneys also from that point of view will be regarded as agents of the client. In fact, the consent decree is authenticated by the respective attorneys For the parties consenting to the decree and the names of such attorneys appear at the foot of such consent decree, a certified copy of which has been filed in these proceedings and which I direct to be filed in this application as part of its records.
[7] her suit No.158 of 1935
For these reasons, I am satisfied that the requirements of an acknowledgment with respect to writing and signature as provided in the proviso to Article 183 of the Limitation Act have been satisfied in this case.

28. I proceed now to record my opinion on the points raised in the Special Report of the Registrar. In my judgment, the final decree in this suit dated 20-4-1936 is not barred by limitation by reason of revivor and acknowledgment and also by reason of the fact that there is no application by the plaintiff decree-holder within the meaning of Article 183 of the Limitation Act to enforce the judgment. Even were it possible to hold that sale reference was a kind of application to which Article 183 of the Limitation Act was attracted, I would then permit it after the period of limitation because on the facts of this case I hold there was "sufficient cause" within the meaning of Section 5 of the Limitation Act. I answer the Registrar's first point therefore in the negative. In my judgment, the answer to the second point raised in the Special Report follows as a matter of course. In my judgment, the reference should proceed and I answer the second point of the Registrar's Special Report in the affirmative.

29. The defendant will pay to the plaintiff decree-holder the costs of this proceeding to be taxed as an application on motion.
Answer accordingly.